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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,403	02/08/2002	Klein A. Rodrigues	2004.ALC	4788

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EXAMINER
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DELCOTTO, GREGORY R

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/072,403

Applicant(s)

RODRIGUES, KLEIN A.

Examiner

Gregory R. Del Cotto

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 April 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5-8,15 and 17-26 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 26 is/are allowed.  
6) ☒ Claim(s) 1-3,5-8,15,17,18 and 20-25 is/are rejected.  
7) ☒ Claim(s) 19 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Claims 1-3, 5-8, 15, and 17-26 are pending. Applicant's arguments and amendments filed 4/29/06 have been entered. Note that, claim 8 is not present in the listing of the claims and therefore, this claim has been treated as submitted previously.

### **Objections/Rejections Withdrawn**

The following objections/rejections as set forth in the Office action mailed 11/2/05 have been withdrawn:

The objection to claims 2, 3, and 5 because informalities has been withdrawn.

The rejection of claims 1-8 and 15-25 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement has been withdrawn.

The rejection of claims 1-8 and 15-26 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention has been withdrawn.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

Art Unit: 1751

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Art Unit: 1751

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3, 5-8, 15, 17, 18, and 20-25 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kirk et al (US 5,843,192).

Kirk et al teach a composition useful in a washing process containing at least one vinyl amide polymer. The vinyl amide polymer contains from 5 to 100 weight percent of at least one vinyl amide monomer, and from 0 to 95 weight percent of one or more vinyl ester monomers. Kirk et al also provides a method of cleaning an article and a method of providing soil resistance to an article using the vinyl amide polymer. See Abstract. The vinyl amide polymer preferably contains less than 3 weight percent of one or more ethylenically unsaturated carboxylic acid monomers, based on the total weight of the monomers. The carboxylic acid monomers include acrylic acid, methacrylic acid, maleic acid, itaconic acid, etc. The vinyl amide polymer preferably contains less than 3 weight percent of one or more acrylamide monomers. Suitable acrylamide monomers include acrylamide, N,N-dimethylacrylamide, acrylamidoalkylenesulfonic acid, etc. See column

Art Unit: 1751

4, lines 30-50 and claim 1. The cleaning solution may optionally contain additional components such as surfactants, builders, buffering agents, bleaching agents, enzymes, perfumes, etc. See column 5, lines 1-35. The treatment solution is contacted with the article by immersing the article with the solution. See column 6, lines 25-45.

Specifically, Kirk et al teach a composition containing 8% linear alkyl benzene sulfonate, 16% alcohol ether sulfate, 6% nonionic surfactant, 0.5% enzyme, 2% vinyl amide polymer, etc. See column 14, lines 50-69. Note that, the Examiner maintains that the vinyl amide polymer would inherently have the same mole percent of amide monomer as recited by the instant claims. Kirk et al disclose the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of Kirk et al anticipate the material limitations of the instant claims.

Alternatively, even if the broad teaching of Kirk et al are not sufficient to anticipate the material limitations of the instant claims, it would have been nonetheless obvious to one of ordinary skill in the art to arrive at the claimed mole percent of amide polymer of the composition in order to provide the optimum soil resistant properties to the composition since Kirk et al teach that the amount and type of amide used in formulating the resultant polymer may be varied.

Claims 1-3, 5, 6, 8, 15, 17, 18 and 20-25 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 634,486.

'486 teaches fabric finishing compositions containing from 0.1 to 45% by weight of a dye deposition inhibiting agent and one or more of the following additives: water,

Art Unit: 1751

solvent, builder, surfactant, inert diluent, buffering agent, bleach, perfume, fabric softener, etc. See page 4, lines 40-50. Suitable dye deposition inhibiting agents include acrylamide polymers. The acrylamide polymer is formed from at least one acrylamide or N-substituted acrylamide monomer and optionally one or more vinyl monomers. The acrylamide polymer is formed from about 50 to 100 weight percent of the acrylamide or N-substituted acrylamide monomer and 0 to about 50 weight percent of the vinyl monomer. Suitable acrylamide monomers include dimethylacrylamide, methylacrylamide, etc. Suitable vinyl monomers include acrylic acid, methacrylic acid, maleic acid, styrene, etc. See page 11, line 20 to page 12, line 35 and claim 9.

Specifically, '486 teaches a monomer composition which contains 80 percent by weight of N,N-dimethylacrylamide and 20 percent by weight hydroxyethyl methacrylate. See page 17, lines 1-30. '486 discloses the claimed invention with sufficient specificity to constitute anticipation.

Accordingly, the teachings of '486 anticipate the material limitations of the instant claims.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP 634,486.

'486 is relied upon as set forth above. However, '486 does not teach, with sufficient specificity, a composition containing water in the specific amount in addition to the other requisite components of the composition as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing water in the specific amount

Art Unit: 1751

in addition to the other requisite components of the composition as recited by the instant claims, with a reasonable expectation of success, because the broad teachings of '486 suggest a composition containing water in the specific amount in addition to the other requisite components of the composition as recited by the instant claims.

### ***Allowable Subject Matter***

Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 26 is allowed.

None of the references of record, alone or in combination, teach or suggest the specific amide containing polymer as recited by instant claims 19 and 26.

### ***Response to Arguments***

With respect to Kirk et al , Applicant states that less than 3 weight percent of acrylamide monomers as taught by Kirk et al is not equivalent to the 5 to 100 mole percent of the acrylamide monomer units as claimed in claim 1 of the invention.

First, as stated previously, the Examiner sees no distinction between the polymers of Kirk et al and those recited by the instant claims. Note that, clearly nitrogens can be present in the polymer backbone as indicated by instant claim 2 in which it states "wherein said amide monomer has at least one amide moiety in the polymer backbone...". Additionally, less than 3% by weight of one or more acrylamide monomers as taught by Kirk may correspond to at least five mole percent as recited by the instant claims depending upon the molecular weight of the acrylamide monomers

and total moles of the polymer units. Note that, mole percent and weight percent are different modes of measurement. The Examiner maintains that the polymers as taught by Kirk et al fall within the scope of the instant claims. Applicant has provided no evidence to show that the claimed polymers as recited by the instant claims are different from those taught by Kirk et al. Note that, once a reference teaching a product appearing to be substantially identical is made the basis of a rejection, and the Examiner presents evidence or reasoning tending to show inherency, the burden shifts to the Applicant to show an unobvious difference.

For better clarification of the claimed invention, it is suggested that Applicant call the Examiner to discuss the outstanding issues and prior art.

With respect '486, Applicant states that independent claims 1 and 22 have been amended to indicate that the acrylamide polymer includes an anionic monomer and '486 does not teach or suggest such polymers, but rather limits its copolymer to acrylamide and nonionic vinyl monomers. In response, note that '486 teaches that the vinyl monomers may be substituted with carboxylic acids such as maleic acid, methacrylic acid, etc., which are the same as the anionic monomers listed on page 3, line 20 to page 4, line 10 of the instant specification. Thus, the Examiner maintains that '486 teaches the same polymers as recited by the instant claims.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1751


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gregory R. Del Cotto  
Primary Examiner  
Art Unit 1751

GRD  
July 10, 2006